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SUBJECT: BENIN: 2007 INVESTMENT CLIMATE STATEMENT

REF: 06 STATE 178303

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¶1. Per reftel, below is the 2007 Investment Climate Statement for Benin.

¶2. Investment Climate Statement

A.1. Openness to Foreign Investment

Beninese law guarantees the right to own and transfer private property. The government of Benin officially favors and encourages foreign investment. Historically, many opportunities for foreign investment were linked to the privatization of former state-owned enterprises, but now only a handful remain, including: SONAPRA (cotton), SBEE (electricity), SONEB (water), Benin Telecoms, and SOBEMAP (stevedoring services). The Port of Cotonou (Port Autonome de Cotonou) and postal service (La Poste du Benin S.A.) are also government-owned. In 2006, following privatization and subsequent allegations of mismanagement, the Government appointed an Administrator to run former parastatal SONACOP (distribution of gasoline and petroleum products), and has effectively reassumed control of that enterprise. Privatization of the remaining state-owned entities is slow-moving. The government requires that Beninese nationals partly own privatized companies. Privatization of debt-ridden SONAPRA (begun in 2003) has stalled several times. Despite the GOB's renewed commitments to privatization, the GOB's plans for privatizing the cotton sector remain unclear. The World Bank, the European Union, other international development banks, and the Millennium Challenge Account fund many infrastructure renovation contracts with grants or loans.

The current investment code establishes the conditions to obtain benefits under different investment regimes and grants extensive discretionary power to the Investment Control Commission at the Ministry of Commerce and Industry. Tax reforms introduced in recent years largely removed the need for special incentives to potential investors. The 1990 investment code was promulgated in order to establish a simplified system readily accessible to all investors. The government has established a so-called "guichet unique" or one-stop shop at the Trade Ministry to help dispense with unnecessary and time-consuming formalities facing investors. Many investors complain that the investment code remains difficult to implement in practice, however, because of an inefficient and corrupt bureaucracy.

The GOB established the Business Registration Center at the Cotonou headquarters of the Benin Chamber of Commerce and Industry

(CCIB) to facilitate the registration of new businesses. Thanks to this Center, it is possible to register a new company within 2 weeks depending on the type of company. To ease the startup process, investors are strongly encouraged to hire a local notary for the required assistance. Any American firm establishing an office in Benin should work with an established local partner of solid reputation and retain a competent Beninese attorney. A list of English-speaking lawyers and notaries public is available from the Embassy's Commercial section.

A.2. Conversion and Transfer Policies

Benin is a member of the West African Economic and Monetary Union (WAEMU). Its currency is the CFA franc, which is issued by the Central Bank of West African States (BCEAO).

In order to stimulate economic recovery, an adjustment of the exchange rate was implemented and the CFA franc was devalued by 50 percent on January 11, 1994. The CFA franc is fixed against the euro, and one USD dollar presently equals about CFA 510 (December 2006). The conversion system does not set restrictions on international transfers. However, in order to transfer a significant amount of money internationally, the investor needs to obtain authorization from the Ministry of Finance and Economy by completing a form called the "Formulaire d'Autorisation de Change". Continued political instability or armed conflict in Cote d'Ivoire may have an impact on the stability of the CFA, but there are no plans to devalue at present. As a member of WAEMU, any company established in Benin can export goods to the other member states under the External Common tariff (TEC or "Tariff Exterieur Commun") regime if the goods are locally produced. TEC promotes sub-regional trade by eliminating trade barriers and combating unnecessary competition between the member states.

A.3. Expropriation and Compensation

The state guarantees under law that it will make no attempt to

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nationalize enterprises operating in Benin. The government at this time is focused on continuing to privatize its state-owned industries and has shown no indication of returning to the policy of expropriation carried out prior to the establishment of democracy in 1990. The President of Benin has spoken publicly and often about the importance of attracting foreign investment. Though there are no laws that force local ownership of most businesses, the Government of Benin requires that investors buying state companies being privatized have some Beninese participation.

A.4. Dispute Settlement

The settlement of disputes pertaining to breach of contract, contract enforcement, claims, land titles, and related issues must be adjudicated in the civil courts. There is no separate commercial court system. The backlog of civil cases often results in a wait of two or more years before matters proceed to trial. In recent years, judges have shown increasing independence in ruling against government interests. Corruption, however, remains a serious impediment to the administration of justice. Businesses and other litigants routinely complain that corruption is particularly widespread at the trial court level, as well as at administrative hearings. Reforms to the court system are part of Benin's Millennium Challenge Account (MCA) Compact, which entered into force in October 2006.

A.5. Performance Requirements and Incentives

Benin's government maintains a welcoming posture to foreign investors but Embassy Cotonou is unaware of performance incentives specifically targeting foreign investors. Foreign investors and workers are not subjected to onerous visa or residency permit requirements. Foreign investors have generally not complained of discriminatory or preferential export or import policies, although foreign businesses complain that they are held to higher standards than Beninese businesses. For example, foreign companies are required to adhere to social security and labor regulations, which are routinely ignored or minimally followed by Beninese companies.

One long established American company has complained, for example, of discriminatory treatment in being refused permission to establish a bonded warehouse for goods in transit.

A.6. Right to Private Ownership and Investment

The right to private ownership and investment exists in both theory and practice. Beninese law guarantees freedom of trade; choice of customers and suppliers; the right to move freely throughout the country; the right of foreign employees and their family members to leave the country; and freedom from government interference in the management of private enterprises.

A.7. Protection of Property Rights

Secured interests in real and personal property are recognized and enforced. Benin's legal system protects and facilitates acquisition and disposition of all property rights, including land, buildings and mortgages. In theory, the government respects intellectual property rights. In practice, however, bootlegged musical cassettes and CDs are widely available, despite government interdiction efforts.

However, in the last quarter of 2005 thousands of counterfeit items were seized and burnt by the officials of the Ministry of Culture and Tourism. Land tenure remains a complicated question in many areas and it is often difficult to transfer clear title to real property. Land title reform is another important element of Benin's Millennium Challenge Account (MCA) Compact.

A.8. Transparency of the Regulatory System

Although the government has adopted a transparent policy to foster free enterprise, red tape is often a problem. Bureaucratic procedures are insufficiently streamlined and are rarely transparent in practice. However, the new business law called OHADA, signed by the member states of the Organization for the Harmonization of Business Law in

Africa, including Benin, has solved a number of difficulties an international enterprise might encounter in trying to establish a business in Benin. OHADA is a legal regime that covers trade and business in the organization's member states including Benin, Cameroon, Congo, Gabon, Bissau Guinea, Niger, Chad, Burkina-Faso, the Central Africa Republic, Guinea, Mali, Senegal, and Togo. In the early 1990's, the government enacted a series of reforms aimed at modernizing trade regulations. Many labor laws, however, remain

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holdovers from the Marxist era and serve as impediments to private enterprise, despite a revamping of the labor code in 1998.

A.9. Efficient Capital Markets and Portfolio Investment

Benin's government policy supports free financial markets in Benin, subject to regulatory oversight by the Ministry of Development, Economy, and Finance and the Benin country office of the Central Bank of West African States (BCEAO). Credit is allocated on market terms and foreign investors can get credit on the local market. However, legal, regulatory and accounting practices are often unwieldy. Some observers claim the banking industry is not subject to effective mandatory regulation and some banks are not managed in a transparent fashion. There are only about a dozen banks operating in Benin.

A.10. Political Violence

Benin is a democracy that functions reasonably well, particularly in comparison to other countries in Sub-Saharan Africa. Benin conducted its fourth presidential election in March 2006 peacefully, and with widespread voter participation. Political violence is rare. There are no nascent insurrections or other politically motivated violent activities. People in all regions of the country feel free to express their political views without fear of reprisal from the government.

Benin enjoys friendly relations with its neighbors. It has a tradition of religious tolerance. Ordinary crime is moderate, even

in urban areas, although rising crime is a national concern. The next legislative election will be held in March 2007 and the "pre-campaign" has already begun. Election activity will probably eclipse all other endeavors from now until the election. There are some concerns about how efficiently the elections will be organized, but expectations are that a newly-elected parliament should be in place by April 2007, representing yet another step in consolidating Benin's democratic tradition.

A.11. Corruption

Benin has laws, regulations and penalties aimed at combating corruption, but the problem is endemic. Actual prosecution and punishment for corruption is rare but, encouragingly, in 2006 the GOB has charged several prominent businessmen and former politicians with embezzlement in high profile cases. Efforts to battle corruption by civil society have had some positive effects in influencing public attitudes. The GOB set up an Anti-Corruption Observatory in 2004 to combat all forms of corruption and bribery in the private and public sectors and established a State Inspectorate General to investigate corruption allegations. In April 2006, the incoming President ordered audits of all government ministries and state-owned enterprises. The results of these audits, while not public, have led to some investigations, and demands for repayment of many unjustified expenditures.

The High Court of Justice prosecutes high-ranking GOB officials involved in corruption or bribery. Foreign businessmen who want to establish a business may encounter numerous attempts to solicit bribes. Hiring a notary public who understands the country's business laws is advisable. Examples of bribe solicitation include civil servants at the state-owned telecommunications parastatal (Benin Telecoms SA, formerly OPT), who demand a bribe before granting a phone line. Labor ministry inspectors reportedly demand bribes to monitor union elections. Bribery of foreign officials is forbidden under the Foreign Corrupt Practices Act. An American company recently paid the largest U.S. Securities and Exchange Commission (SEC) fine in history under the FCPA for its activities in Benin.

B. Bilateral Investment Agreements

Benin has a bilateral investment agreement with France but none with the United States. With respect to investment protection, Benin has concluded agreements with several European countries including:

- Germany: October 10, 1993 Agreement Pertaining to the Mutual Encouragement and Protection of Investment Capital.
- Great Britain: November 27, 1987 Agreement for the Protection of British Investments in Benin.

Benin is also a signatory to various multilateral agreements for investment protection, including the Multilateral Security Agency

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Agreement and Convention for the International Settlement of Investment Disputes.

C. OPIC and Other Investment Insurance Programs:

The Overseas Private Investment Corporation (OPIC) offers financing programs to assist companies wishing to invest in developing countries, including Benin. OPIC insurance may be available to companies wishing to invest in Benin depending on the nature and extent of the investment. Potential investors should contact OPIC directly for further information at info@opic.gov.

D. Labor

The government adheres to international labor standards and fully recognizes the right to form unions and engage in collective bargaining. The government adopted a new labor code in 1998 aimed at increasing flexibility in hiring decisions, eliminating the need for prior authorization from the government's Labor Office for employee dismissal, and consolidating labor regulations currently previously

scattered among various texts. As a practical matter, however, Benin's labor practices contain many inefficient features reminiscent of the Marxist era. Foreign companies who dismiss employees for unsatisfactory performance are routinely sued. Child labor is widespread and, although it is making efforts, the GOB still needs to do more to suppress it. The Constitution provides workers with the freedom to organize, join unions, meet, and strike, and the Government usually respects these rights in practice. The labor force of approximately 2 million is engaged primarily in subsistence agriculture and other primary sector activities, with less than two percent of the population engaged in the modern (wage) sector. Although approximately 75 percent of the wage earners belong to labor unions, a much smaller percentage of workers in the private sector are union members. There are several union confederations, and unions generally are independent of government and political parties. Strikes are permitted; however, the authorities can declare strikes illegal for stated causes (for example, threatening to disrupt social peace and order), and can require strikers to maintain minimum services.

E. Foreign Trade Zones/Free Ports

There is a free trade zone in the port of Cotonou for Benin's landlocked neighbors (Burkina Faso and Niger). Foreign importers have complained, however, that corruption at the port makes it difficult to benefit from this entity. The GOB plans to construct one industrial zone in each of Benin's 12 Departments in order to attract investment, but only one has become operational. Work has begun on zones in Bohicon and Ouidah. The GOB plans to provide tax breaks for prospective investors as well as infrastructure for water, electricity and telephone service. The most promising zone, in Seme on the coast near the Nigerian border, is also a free trade zone. The site is 200 hectares in size, and there are plans to double it during its second phase.

F. Foreign Direct Investment Statistics

Much of the foreign investment that has entered Benin since 1990 has been through the acquisition of interests in privatized companies. The principal foreign investors in Benin are from Lebanon, India, Germany, France, China, and South Africa. The following are examples of companies sold in part to foreign investors, listed by name, activity, price and buyer:

- British/American Tobacco Company- approx. \$2.6 million - by Rothmans International;
- SIMBENIN (cement company) - approx. \$8.4 million - by ScanCem (Scandinavian group with minority investors; large share later purchased by German company); and
- La Beninoise (brewery) approx. \$15.6 million - by Castel-BGI (French Group)
- Libercom (GSM provider) - approx. \$60 million - by state-owned Chinese telecommunications firm ZTE.

American firms Texaco/Chevron and Kerr-McGee have substantial investments in Benin. Texaco/Chevron provides aviation fuel for the International Airport in Cotonou, has completed its fifth service station in Benin, and has plans to open more service stations throughout the country. Houston-based oil independent Kerr-McGee has acquired rights to a deep-water block off Benin's coast and drilled two exploratory wells in March 2003.

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